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**Resources, Community, and
Economic Development Division**

B-270540

November 28, 1995

The Honorable James V. Hansen
Chairman, Subcommittee on National
Parks, Forests, and Lands
Committee on Resources
House of Representatives

Dear Mr. Chairman:

Several bills have been introduced in the 104th Congress that propose reforms to current concessions law affecting the National Park Service and several other land management agencies. In July 1995, we testified before your Subcommittee and provided our views on these bills.¹ For the most part, the proposed bills were aimed at improving competition among concessioners on federal lands which would likely result in higher returns for the federal government. Specifically, we commented on H.R. 773 and its companion bill S. 309, H.R. 2028, and H.R. 1527.² Since we testified, H.R. 2028, with some modifications, has been incorporated into H.R. 2491--the House budget reconciliation bill.

On October 30, 1995, the Park Service developed projections of the future financial returns to the government from concessioners that would be generated under current law, H.R. 773 and S. 309, and the then-current version of H.R. 2491. (Subsequently, some provisions of H.R. 2491 have been significantly modified.) Financial returns to the government include two components--franchise fees and monies in special accounts. Franchise fees, also called cash fees, are returned to the Treasury. Monies in special accounts are funds that are set aside by the concessioners to maintain and improve government-owned facilities used by them. The Park Service estimated financial returns for

¹Federal Lands: Views on Reform of Recreation Concessioners (GAO/T-RCED-95-250, July 25, 1995).

²H.R. 1527 does not affect the Park Service. It addresses fees for ski areas in the Forest Service.

1995 and then projected future returns for the next 7 years--1996 through 2002. These projections and explanatory notes are included as attachment I.³

Based on our past work on concessions issues, you asked us to comment on the assumptions the Park Service used to develop each projection. We discussed our comments with your office on November 3, 1995. At your request, this report documents the highlights of that discussion.

Before providing our specific comments on the Park Service's assumptions, it is important that our comments regarding the return to the government be put in the proper context. To do this two points are important. First, as we testified in July, the provisions of H.R. 773 and S. 309, as well as H.R. 2491, would provide for needed reform in the Park Service's concessions policy. These bills address the principal problem that we and others have identified with current concessions law--the need for greater competition in awarding concessions contracts. We believe that increased competition will result in improved services to the public and a higher return to the government. Each of the bills are positive steps that will help accomplish these results. Second, while the focus of this report is on the future financial returns to the government from concessions, current law and each of these bills state that this is a secondary consideration in managing concession operations. The primary consideration is meeting the mission of the Park Service--protect park resources and provide quality services to visitors.

ASSUMPTIONS USED FOR
PROJECTIONS UNDER CURRENT LAW

Under the Concessions Policy Act of 1965, concessioners that perform satisfactorily are granted a preferential right of renewal in the award of future contracts. This preferential right, as implemented by the Park Service, guarantees a concessioner the award of the next contract by allowing it to match any competitor's offer that exceeds its own. As early as 1975,⁴ we reported that this preference is not in the government's best interest because

³Attachment I also contains a projection for S. 1144. As requested, we did not comment on the assumptions or projections related to this bill.

⁴Concession Operations in the National Parks--Improvements Needed in Administration (RED-76-1, July 21, 1975).

it impedes competition, and therefore, fees are lower than they would otherwise be in a fully competitive environment.

Park Service officials told us that in developing its projection of future returns to the government under current law, the Park Service assumed that it would be able to increase franchise fees as current contracts expired or reached a point at which the fees could be reconsidered (which generally occurs every 5 years). Their assumption was based on an analysis of all 82 contracts with annual gross revenues greater than \$900,000. These officials indicated that fees would be increased as much as possible and still allow the concessioner the opportunity to earn a reasonable profit. These increases in fees would vary by contract. In addition, the Park Service assumed that the monies in special accounts and franchise fees would remain in the same proportions. The Park Service's projections under current law are included in table 1.

Table 1: The Park Service's Projections of Returns Under Current Law
Dollars in millions

	1994 (actual)	1995 (estimate)	1996	1997	1998	1999	2000	2001	2002
Gross revenues ^a	\$652.3	\$671.9	\$692.0	\$712.8	\$734.2	\$756.2	\$778.9	\$802.2	\$826.3
Franchise fees	19.0	19.9	21.4	23.4	26.1	31.3	33.4	34.4	36.2
Monies in special accounts	14.4	14.4	15.5	17.0	18.9	22.7	24.2	24.9	26.2
Total return	\$33.4	\$34.4	\$36.9	\$40.4	\$44.9	\$54.0	\$57.6	\$59.3	\$62.3

Note: Some columns do not add to totals because of rounding.

^aThe Park Service assumed that gross revenues would increase by 3 percent each year.

Source: The Park Service.

The Park Service's projections for franchise fees in table 1 reflect rates of return that increase from 2.9 percent of the gross revenues in 1994 to an anticipated 4.4 percent in 2002. While we did not review the Park Service's analysis of each contract, in the absence of increased competition, the level of increases projected by the Park Service are unlikely and are not supported by past history. Our work has shown that from 1989 through 1994, franchise fees, on average, went from 2.5 percent to 2.9 percent. In addition, the Park Service's assumption that the proportion

of monies in special accounts to franchise fees would remain constant is not supported by past experience. According to Park Service officials, special accounts are being increasingly used by the agency and concessioners. As the use of special accounts increases, the amount of franchise fees is likely to decrease. Therefore, the Park Service's projections of future returns from franchise fees under current law appear to be overstated.

ASSUMPTIONS USED FOR PROJECTIONS
UNDER H.R. 773 and S. 309

H.R. 773 and S. 309 seek to reform the current concessions policy by encouraging greater competition among the largest concessioners. This is largely to be accomplished by eliminating preferential rights of renewal for most concessioners with gross revenues exceeding \$500,000 a year. In addition, the bills call for the Park Service to establish contracts that gradually extinguish the concessioners' possessory interest. Under current law, concessioners have the right to be compensated for improvements they construct within national parks. This right, known as "possessory interest," is unique to the Park Service.

In developing their projections of future returns under H.R. 773 and S. 309, Park Service officials told us that they assumed that these bills would promote increased competition. As a result, they assumed that franchise fees would be 2 percent higher than those generated under current law. In addition, the officials assumed that the Park Service would gradually extinguish the concessioners' possessory interest as the bills permit. The Park Service's projections for H.R. 773 and S. 309 are included in table 2.

Table 2: The Park Service's Projections of Returns for H.R. 773 and S. 309

Dollars in millions

	1995 (Estimated)	1996	1997	1998	1999	2000	2001	2002
Franchise fees and moneys in new special accounts	\$19.5	\$22.3	\$28.0	\$32.9	\$44.5	\$48.5	\$50.4	\$64.6
Monies in existing special accounts	14.9	14.8	14.7	15.1	15.2	15.6	15.9	6.6
Total return	\$34.4	\$37.1	\$42.6	\$48.0	\$59.6	\$64.1	\$66.3	\$71.2

Note: Some columns do not add to totals because of rounding.

Source: The Park Service.

Since H.R. 773 and S. 309 eliminate preferential rights of renewal for most large concessioners, it is reasonable to assume that these bills will result in greater competition and a greater return to the government. Therefore, the Park Service's assumption that competition would result in a 2-percent increase over current franchise fees appears reasonable. However, according to the Park Service, its projections of the total amount of franchise fees under H.R. 773 and S. 309 are based on the projections under current law. Accordingly, since the projection of franchise fees under current law appears to be high in light of the Park Service's prior experience, the projections for H.R. 773 and S. 309 would be high as well.

Perhaps the most critical assumption that the Park Service made in developing this projection involves the agency's acquisition of the concessioners' possessory interest. Specifically, the Park Service assumed that the concessioners' possessory interest would be gradually extinguished over an extended period of time. During this time, the Park Service also assumed that concessioners would return more to the government in franchise fees and monies in special accounts than they do now. In our view, it is unlikely that concessioners will be willing to turn over their assets--their possessory interest--and, at the same time, return more to the government in franchise fees and monies in special accounts as the Park Service projects. To the extent that the Park Service acquires concessioners' possessory interest, the concessioners would likely expect to be compensated. This compensation would probably come in the form of reducing the return to the government. Accordingly, the Park Service's projection likely overstates the future returns to the government under H.R. 773 and S. 309.

ASSUMPTIONS USED FOR
PROJECTIONS UNDER H.R. 2491

The Park Service's projections were based the version of H.R. 2491 that was current when they made their projections on October 30, 1995. Since that time several provisions of the bill have been modified. Like H.R. 773 and S. 309, the then-current version of H.R. 2491, attempted to reform the current concessions policy by encouraging greater competition in the award of concessions contracts. H.R. 2491 accomplished this largely through eliminating guaranteed preferential rights of renewal for all concessioners. However, a concessioner could acquire a limited preference over the term of the contract if its performance exceeded established standards. This

preference could result in the concessioner's earning up to 10 percent of the maximum points available in the scoring process that the Park Service uses to select the next concessioner. By linking higher levels of performance to its contract selection process, the bill attempted to provide concessioners with a performance incentive and still maintain a competitive environment for awarding new contracts. Unlike H.R. 773 and S. 309, H.R. 2491 permitted concessioners to retain their possessory interest and generally did not call for the Park Service to acquire concessioner-owned assets.

The Park Service projections of H.R. 2491, found in table 3, assume that the bill would result in less competition than exists under current law. As a result, the returns to the government would be lower than the Park Service projects under current law. According to Park Service officials, this assumption was based on five factors:

1. The performance incentive would allow concessioners the opportunity to acquire an advantage in the award of the next contract. The Park Service assumes that this advantage would impede competition.
2. Allowing concessioners to retain their possessory interest impedes competition because compensating existing concessioners for their possessory interest may discourage prospective bidders.
3. There is no requirement in the bill for concessioners to match any better competing offer to win the award of the next contract. Therefore, according to the Park Service, it is conceivable that an existing concessioner could submit a lower bid and, because of the performance incentive, be awarded the contract.
4. The bill does not provide for opportunities to increase the return to the government through a periodic reconsideration of the return, as occurs under current law. As a result, the Park Service assumes that increases in the return to the government that could be realized under current law will not be realized under H.R. 2491.
5. The bill does not provide for opportunities to increase the return to the government when a concession is bought or sold prior to the contract's expiration. As a result, the Park Service assumes that increases in the return to the government that could be realized under current law will not occur under H.R. 2491.

Table 3: The Park Service's Projections of Returns Under H.R. 2491
Dollars in millions

	1995 (estimated)	1996	1997	1998	1999	2000	2001	2002
Franchise fees	\$19.5	\$20.6	\$21.8	\$22.5	\$23.6	\$24.3	\$25.1	\$35.7
Monies in existing special accounts	14.9	14.8	14.7	15.1	15.2	15.6	15.9	6.6
Total return	\$34.4	\$35.4	\$36.5	\$37.6	\$38.7	\$39.9	\$41.1	\$42.3

Notes: Some columns do not add to totals because of rounding. Furthermore, the Park Service data for 1997 and 1998 distinguishes between franchise fees that are paid to the Treasury and franchise fees that would be returned to the parks. For presentation purposes, we combined them.

Source: GAO table based on the Park Service's data.

In our view, the projections made by the Park Service understate the amount of future returns that would result from H.R. 2491. On the basis of our past work in this area, we believe that this is so because, compared to the current law, the Park Service has underestimated the competitive elements of this bill.

The Park Service's assumption that the performance incentive would impede competition has merit. However, under this bill, there still is likely to be greater competition than exists under current law. The degree of impact on competition will largely depend on how the Park Service implements the performance incentive. If large numbers of concessioners are able to meet or exceed the standards established to acquire the full advantage of 10 percent of the points in the scoring process, then competition in the awarding of contracts will be significantly impeded. However, from a program policy perspective, having large numbers of concessioners performing at levels exceeding the requirements established in their contract would be beneficial to parks and park visitors. When evaluating concessioners' performance, the Park Service would have to ensure that only truly deserving concessioners are awarded points towards the future award of the contract. Otherwise, too many concessioners would gain an advantage when their contract expires, and the full

benefits of competition may not be realized. However, barring the unlikely event that all concessioners obtain the full performance incentive, H.R. 2491 still provides more competition than the current law, which guarantees a preference in renewing contracts to all concessioners that perform satisfactorily.

We question the Park Service's assumption that allowing concessioners to retain their possessory interest will impede competition. As long as the possessory interest does not exceed fair market value, it is unlikely that qualified prospective bidders would be discouraged from competing for the contract. Since both H.R. 2491 and current law provide for possessory interest, it is difficult to see how the impact of possessory interest in H.R. 2491 would result in less competition than now occurs under current law. Furthermore, while there are costs and benefits from extinguishing possessory interest, any benefits of extinguishing possessory interest are long-term and are not going to be realized during the time period of the Park Service's projections. Thus, in our opinion, any negative impact that this assumption had on the projected return to the government does not seem warranted.

In the Park Service's view, the remaining three factors--the lack of (1) a requirement for existing concessioners to match a competitor's higher bid, (2) any reconsideration of fees during the term of contract, and (3) a chance to increase fees when concessions are sold--all bypass opportunities to increase the return to the government. Although provisions for these opportunities currently exist under most concessions contracts, the Park Service's past experience with these provisions has generally shown that they have infrequently resulted in increased returns. For example, few incumbent concessioners have had to increase their bid to match a competing offer in order to win the award of the contract. Furthermore, in most cases, the periodic reconsideration of fees has not resulted in increases in the return to the government. Finally, the Park Service has not frequently used the sale of a concession as an opportunity to increase the return to the government. So while the lack of these provisions in H.R. 2491 could have some impact on the future rates of return, it is not likely to result in fees that are less than those projected under current law.

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We met with Park Service program officials, including the Chief of the Concessions Program Division, to obtain their

comments on a draft of this report. These officials raised two major points. First, they indicated that in order to adequately assess their projections, we would have had to review their contract-by-contract analysis used in developing the projections. According to these officials, without looking at this analysis, we could not assess whether the Park Service's projected increases in returns under current law are reasonable. Second, the officials said that by only looking at past performance, as we did, we did not account for the benefits of recent changes in regulations. The program officials told us that since issuing new regulations in 1992, they have been able to generate greater returns than they realized prior to that time.

Because of the need to meet the time demands of the legislative calendar, particularly the reconciliation process, time constraints precluded us from doing a detailed contract-by-contract review as suggested by Park Service officials. Instead, the comments we provided on the assumptions and the projections are based on our past work in this area and discussions with agency officials regarding past performance under current law. We believe these provide a reasonable trend indicator of future potential returns under current law. While we acknowledge that the Park Service can increase returns under current law, their projected increases appear high given the guaranteed preferential right of renewal that continues to exist, even under the 1992 revised regulations. We have added language in the report acknowledging that we did not review the Park Services' contract-by-contract analysis.

In addition, the program officials provided us with several technical and clarifying comments that we incorporated in the report as appropriate.

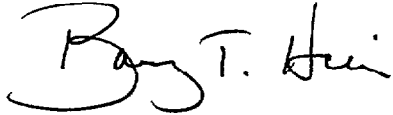
Our work on this report was conducted in October and November 1995 in accordance with generally accepted government auditing standards. The information in this report is based on our past work on concessions issues, discussions with Park Service officials, and our analysis of the bills' provisions. Since the Park Service developed their projections on October 30, 1995, there have been several modifications to H.R. 2491. Our work was based on the version of H.R. 2491 current on that date.

As arranged with your offices, unless you publicly announce the contents of this report, we plan no further distribution until 30 days from the date of this report. At that time, we will provide copies to the Secretary of

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the Interior, the Director of the National Park Service, and interested congressional committees. We will also make copies available to others upon request. If you have any questions about any of the information in this report, please contact me at (202) 512-8021.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Barry T. Hill". The signature is fluid and cursive, with the first name "Barry" being more prominent than the last name "Hill".

Barry T. Hill
Associate Director, Natural
Resources Management Issues

(140343)

PARK SERVICE PROJECTIONS OF FUTURE RETURNS

Breakdown of Projected Returns by Components										
	Actual	1994	1995	1996	1997	Projected 1998	1999	2000	2001	2002
Gross Receipts		652,286,685	671,855,285	692,010,944	712,771,272	734,154,410	756,179,042	778,964,414	802,230,346	826,297,257
Concessions Policy Act of 1965										
Franchise Fees		18,962,672	19,947,832	21,403,622	23,440,430	26,067,535	31,338,528	33,404,404	34,406,536	36,156,477
Special Accounts		14,428,410	14,444,982	15,499,175	16,974,105	18,876,491	22,693,417	24,189,396	24,915,078	26,182,277
Total Return		33,391,082	34,392,814	36,902,797	40,414,535	44,944,026	54,031,945	57,593,800	59,321,614	62,338,754
S309 / HR773										
Fees and New Special Accounts			19,531,552	22,273,633	27,980,769	32,886,642	44,466,843	48,510,385	50,374,500	64,622,361
Existing Special Accounts			14,861,262	14,831,082	14,678,264	15,074,515	15,154,689	15,609,330	15,940,479	6,581,461
Total Return			34,392,814	37,104,715	42,639,033	47,961,157	59,621,533	64,119,715	66,314,979	71,203,822
HR2491(Reconciliation)										
Fees (to Treasury)			19,531,552	20,593,517	15,800,000	21,100,000	23,554,727	24,261,368	25,126,340	35,717,363
Existing Special Accounts			14,861,262	14,831,082	14,678,264	15,074,515	15,154,689	15,609,330	15,940,479	6,581,461
Special Accounts (new)			0	0	6,009,073	1,407,442	0	0	0	0
Total Return			34,392,814	35,424,599	36,487,337	37,581,957	38,709,416	39,870,698	41,066,819	42,298,824
Mandated Amounts to the Treasury					15,800,000	21,100,000	26,700,000	32,300,000	38,200,000	44,400,000
S1144										
Fees (to Treasury)			19,531,552	20,593,517	21,809,073	22,507,442	23,554,727	24,261,368	25,126,340	35,717,363
Special Accounts (to Parks)			14,861,262	14,831,082	14,678,264	15,074,515	15,154,689	15,609,330	15,940,479	6,581,461
Total Return			34,392,814	35,424,599	36,487,337	37,581,957	38,709,416	39,870,698	41,066,819	42,298,824

Note: This chart reflects an analysis of all major contracts that will expire between 1995 and 2002. As contracts continue to expire beyond 2002, the difference between the returns generated by S309/HR773 and the other bills will sharply increase. For instance, if all contracts expired prior to 2002 the return to the government under S309/HR773 would be approximately \$87 million in 2002. The return to the government under HR2491 and S1144 would be only \$42 million in 2002.

The amounts shown in Existing Special Accounts are contractually established accounts. These amounts cannot be converted to fees to Treasury because they are legally committed to Special Accounts by existing contracts. Furthermore, funds available for park use decrease to approximately \$7 million in 2002 under HR2491. This is over \$7 million less than parks presently receive through Special Accounts, and approximately \$58 million per year less than parks would receive under S309/HR773.

Assumptions:

- 1 Projections reflect an analysis of reconsiderations and contract expirations for those contracts that gross more than \$900,000 (82 contracts).
- 2 Gross Receipts increase at 3 percent per year.
- 3 Because of enhanced competition, S309/HR773 will generate increased revenue for the government of 2 percent more of annual gross receipts per contract than the CPA.
- 4 HR2491 and S1144 projections reflect increases at the CPI rate due to decreased competition.
- 5 Ratio of Special Account to Franchise Fee remains constant for CPA.
- 6 Under S309/HR773, fees for renewed contracts will go to special account in Treasury or to park account
- 7 Ratio of Special Account to Franchise Fee for HR2491, S309/HR773, and S1144 changes as contracts expire. Upon contract expiration, special account money in park accounts goes to fees
- 8 The New Special Accounts money in HR2491 would be available in the year after it was received by the Secretary.

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